Supreme Court U.S.
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No. 95-1277

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

BILLIE J. LITZ, Petitioner

v.

JOHN HARDY THOMAS, Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE

RESPONDENT'S BRIEF IN OPPOSITION

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In Propria Persona

42pp

QUESTIONS PRESENTED

1. Is any substantial "federal question" present in the case?

2. Did the state court judgment rest on adequate and independent state grounds?

JURISDICTION

Although Petitioner has cited 28 U.S.C.A., Section 1257(a), to invoke jurisdiction, Respondent's position is that since no substantial federal question is present, and that the state court judgment rests on adequate and independent state grounds, the Supreme Court should decline to hear the case.

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STATEMENT OF THE CASE

1. RELEVANT HISTORY.

A. First Action Between the Parties:

In 1988, Respondent, an attorney, filed an action in state court against Petitioner, his former client, for unpaid legal fees and costs advanced. Petitioner cross-complained against Respondent for professional malpractice, breach of fiduciary duty, and conversion.

The case was tried. The jury found for Respondent attorney upon his Complaint, and found against Petitioner on her Cross-Complaint. The jury made special findings of fact, including that the attorney (Respondent) had not been negligent, had not breached his fiduciary duty to his client, and had not converted Petitioner's money.

A copy of the Judgment is included in the Appendix. Petitioner did not appeal the Judgment entered against her.

B. Second Action Between the Parties:

The statute of limitations in California for fraud is three years. On the 365th day of the third year after the above Judgment in Respondent's favor

was entered, Petitioner filed a state court "fraud" action against Respondent.

Although Petitioner entitled her Complaint to be for "fraud", the gravamen of the Complaint was that Respondent had lied during the above trial between these same two parties, three years earlier. The Superior Court sustained Respondent's Demurrer on the ground of uncertainty, and granted leave to Petitioner to amend her Complaint.

Petitioner then filed a sixty-page First Amended Complaint for Fraud. The nub of this Amended Complaint was the same as that of the Complaint: the alleged false testimony of Respondent at the completed attorney's fees and malpractice, etc., trial between the parties, supra. Additionally, Petitioner made the astonishing allegations that her own malpractice attorney, one Lande, also lied in his testimony at that trial (despite these grave allegations, Petitioner never filed an action against Lande)!

The Superior Court took judicial notice of the first action between the parties, heard oral argument upon the Demurrer, and, then, sustained Respondent's Demurrer to the First Amended Complaint, without leave for Petitioner to amend. The grounds for sustaining the Demurrer were res judicata and impermissible collateral attack on the Judgment.

C. Appeal to the California Court of Appeal:

Petitioner appealed the Judgment in the second action to the California Court of Appeal. She filed two briefs and many exhibits.

Although Petitioner raised no legal issue in her briefs, the Court of Appeal, with great patience, read everything Petitioner had filed and lodged with it. The Court then wrote a lengthy Opinion (fifteen pages), discussing all possible points in the case, and affirming the Judgment of the Superior Court. Petitioner filed a Petition for Rehearing, which was denied.

D. Petition for Review by California Supreme Court:

Petitioner sought Review of the Opinion of the Court of Appeal by the California Supreme Court. Review was denied.

2. MISSTATEMENTS OF FACT SET FORTH IN THE PETITION.

A. Petitioner erroneously states (p. 1 of Petition) that the fraud action she filed was also "an independent action in equity to set aside a Judgment obtained by fraud". Copies of relevant pages of Petitioner's Complaint are included in the Appendix; these show the action to be solely a tort action (for fraud).

B. The Superior Court (trial court) Judge who sustained the Demurrer to Petitioner's First Amended Complaint was not a "temporary judge" (p. 1 of Petition). He was a duly-appointed, regular, full-time Judge of the Superior Court of California.

C. Petitioner's claim, that she asserted due process violations during the first action between the parties, is inaccurate. No such assertion was ever made at trial of the first action (Complaint for attorney's fees and Cross-Complaint for malpractice) between the parties. Only fleeting, and wholly formal, references were made to a claimed lack of due process in Petitioner's First Amended Complaint (second action between the parties), and in her briefs filed in the California Court of Appeal.

D. At the trial of the first action between the parties, Respondent won Judgment against Petitioner for $60,678.75 in attorney's fees, plus interest and costs. Petitioner won Judgment against Respondent for $359.00. Petitioner's statement (p. 3 of Petition) that she has not been paid the $359.00 is completely erroneous; Respondent credited his Judgment against Petitioner in that amount, $359.00.

E. Petitioner's statement (pp. 3-4 of Petition) that Respondent lied at the trial of the first action between the parties is false. That was simply the allegation Petitioner made in the

second action (for fraud), in order to try to resurrect her completed legal dispute with Respondent. The trial and appellate courts saw through this artifice, and sustained Respondent's Demurrer upon the ground of res judicata.

F. There is no evidence that Petitioner's "malpractice attorney" (in the second action between the parties), one Lande, had a "deficient memory" at trial, or otherwise (p. 4 of Petition). Indeed, instead of having a "deficient memory", Petitioner previously has accused, said Lande, her own attorney, of also lying at the first trial between the parties and, also, of corruptly "selling out" to the other side! She made these accusations in oral argument (Demurrer hearing) and in her briefs on appeal.[1]

G. Petitioner is entirely erroneous in stating (p. 6 of Petition) the certainty of her winning the first action between the parties if:

(1) Respondent had not lied at trial;

(2) Her own attorney, Lande, had not lied at trial (Petition, p. 19, para. 4); and

---

1. Curiously, Petitioner never filed an action against Lande for his perjury and corruption.

(3) Her own attorney, Lande, had not had memory loss, or had not "thrown the case to the other side" (Petition, p. 6, para. 1; p. 28, para. 4).

Petitioner had a fair trial by twelve jurors. At the trial, she had an attorney, Lande, who represented her interests aggressively. She lost the trial because Respondent proved his case and Petitioner did not prove hers.

H. There are many instances of misstatements of fact in Petitioner's "A. FROM THE BEGINNING - THE DISSOLUTION CASE", pp. 6-14 of Petition, but Respondent will not burden the Supreme Court by pointing them all out here. They have no relevance to the issues at bench.

Suffice it to say that Respondent was Petitioner's lawyer for several years, in a very acrimonious, time-consuming, difficult, and expensive, Dissolution of Marriage action and related actions, seeking to recover funds Petitioner had loaned to her husband before their marriage. Respondent provided his legal services to Petitioner, and advanced substantial costs for her, over an approximate three-year period. Respondent did so upon Petitioner's continued promise to pay him when he collected her money from her ex-husband.

Respondent was successful in every one of the several legal actions

necessary to secure Petitioner's rights and to collect every cent of the money owed her. Finally, when he had collected all of Petitioner's money from her ex-husband, she changed her mind about payment of legal fees and costs. She told Respondent she would pay him only approximately ten percent (10%) of his accrued bill for services and costs rendered during the preceding three-year period.

Respondent brought suit for his fees and costs, and obtained Judgment for all he sought. Petitioner Cross-Complained for malpractice, conversion, and breach of fiduciary duty; she lost in every respect, save for Judgment for $359.00 for interest for a claimed temporary conversion of the money Respondent had collected from Petitioner's ex-husband.

I. Petitioner also misrepresents her liability for attorney's fees to another attorney, Timothy C. Karen (p. 14 of Petition). She infers he, also, owes her money. Petitioner would mislead the Court here; Attorney Karen, also, in addition to Respondent, had to bring suit against Petitioner because she did not keep her promise to pay him for his legal services.

J. Again, Petitioner misstates fact in stating Respondent lied at trial of the first action between the parties (p. 18 of Petition). That is only her contention, and it is false. This issue was presented directly to the jury; the

jury found for Respondent; the issue is settled.

K. Petitioner misstates fact in stating her malpractice attorney, said Lande, "made no serious attempt to impeach the above false testimony" (p. 18 of Petition). To the contrary, he tried hard to impeach Respondent's testimony, but the jury believed neither him nor his client. Petitioner's inference, that she lost only because of the incompetence, perjury, or venality, of her own attorney, Lande, is false, and seeks to mislead the Court. She lost because she had no case.

L. Petitioner misstates fact by inferring some requirement that her attorney, Lande, and Respondent's attorney, Biggins, inform the trial judge of some ruling of another Judge, in another case, and not between these parties (p. 19, para. 1 of Petition). That is but her contention, and it is erroneous.

M. Petitioner misstates fact by libeling yet another person: the trial judge at the first action between the parties (Judge Johnson) (p. 19, para. 3 of Petition). For the first time, Petitioner now erroneously claims he did not carry out his judicial responsibility ("to make sure the truth was told to the jury"). This is only Petitioner's opinion; it is not fact.

REASONS TO DENY THE WRIT

1. NO SUBSTANTIAL FEDERAL QUESTION PRESENT IN THE CASE.

Under the jurisdictional statute (28 U.S.C.A., Section 1257(3)), there must be a federal question, in order to invoke the jurisdiction of the United States Supreme Court. However, the mere presence of a federal question will not allow review, unless that federal question is "substantial". Ulman & Spears, "Dismissed for Want of a Substantial Federal Question", 20 B.U.L. Rev. 501 (1940); Note, "The Insubstantial Federal Question", 62 Harv. L. Rev. 488 (1949); Note, "The Supreme Court Dismissal of State Court Appeals for Want of Substantial Federal Question", 15 Creighton L. Rev. 749 (1982).

Even though a question of federal law has been raised, if that question appears only to be a wholly formal one, or is so absolutely devoid of merit as to be frivolous, the Court will not hear the case. Equitable Life Assur. Soc'y. v. Brown, 187 U.S. 308 (1902); Zucht v. King, 260 U.S. 174 (1922).

The federal question must have been raised properly in the state courts. It must be clear from the record that a claim under the federal constitution was presented to the state courts, Webb v. Webb, 451 U.S. 493, 501 (1981), and the claim must have been specifically identified.

In Petitioner's sixty-page First Amended Complaint, she made only the briefest of references to the due process clause of the U.S. Constitution. Her action was a tort action, for fraud, filed in state court, pursuant to substantive state law. However, the gravamen of her Complaint was that Respondent had "defrauded" her (and the Court, a novel theory) by lying at the trial of the first action between the parties (action for attorney's fees and costs; cross-action for attorney malpractice, etc.).

Likewise, in Petitioner's appellate briefs, she made only perfunctory and vague references to the alleged deprivation of due process because of her not prevailing in the first action between the parties. Petitioner's Opening Brief, filed in the California Court of Appeal, is fifty pages in length. In that brief, this is all there is about any federal question: "My U.S. Constitutional and California State Constitutional rights have been violated and property (my $60,241.93 Mr. Thomas stole when he lied under oath) has been taken without due process".

Petitioner's Reply Brief, seventeen pages in length, contains only this, as to any possible federal question: "Because of the fraud on the court, I did not receive a fair trial and due process in Case No. 595034".

Her Petition for Rehearing, thirty-three pages in length, contains only this vague, and unusual, reference to an alleged federal question:

> "Through no fault of my own, my attorney, Mr. Lande did not represent me and I lost CASE NO. 595034. There was not due process because I believed I had representation by an attorney, had paid one, and my property was taken ($60,000+ which was being held in Mr. Thomas' trust account at the time) after the trial because Mr. Thomas won judgment. This is a violation of my California and U.S. Constitutional rights as a citizen."

It is clear that the federal question attempted to have been asserted by Petitioner was done so only as a formality, and as a ruse. There is no substance to the claim of a federal question.

Petitioner's action was stated by her to be a "fraud" action; however, this was but a sham employed by her to try to resurrect the finished legal dispute between the parties, because she had not appealed the Judgment from the first action between the parties. Her claim, now, of the presence of a federal question, is just as false and deceptive as was her alleged "fraud" action.

For that reason, and, also, because the alleged federal question is so absolutely devoid of merit as to be

frivolous, the Court should decline to hear the case.

2. THE STATE COURT JUDGMENT RESTED ON ADEQUATE AND INDEPENDENT STATE GROUNDS.

The most important limitation on Supreme Court review of state court decisions is stated:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. * * * The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion."
> --Herb v. Pitcairn, 324 U.S. 117, 125-126 (1945) (Jackson, J.).

This limitation is illustrated by two fundamental propositions: 1) the

Court will not review a case, even though it contains a federal question, if there is an adequate state ground that supports the decision of the state court; and 2) the Court will accept as binding upon it the state court's decision of questions of state law. Eustis v. Bolles, 150 U.S. 361 (1893); Berea College v. Kentucky, 211 U.S. 45 (1908); Enterprise Irrigation Dist. v. Farmers' Mut. Canal Co., 243 U.S. 157 (1917); Fox Film Corp. v. Muller, 296 U.S. 207 (1935).

The Supreme Court cannot review a state decision, at all, if that decision rests on an adequate state ground. If the state court decided the case exclusively on some ground of state law, and never reached a federal question present in the case, there can be no review of the state court decision. McCoy v. Shaw, 277 U.S. 302 (1928); Johnson v. New Jersey, 384 U.S. 719, 735 (1966).

The state court judgment correctly applied well-settled state law, concerning the doctrine of res judicata. The trial court sustained Respondent's Demurrer to Petitioner's First Amended Complaint for "fraud", on the ground that Petitioner's causes of action asserted in the Complaint were the same as those asserted by her Cross-Complaint (for malpractice, etc.) in the previous action between the parties, and the Judgment in favor of Respondent was a bar to Petitioner's maintenance of her later action against Respondent for

"fraud". It is patent that no federal question is present in this case.

The Court of Appeal wrote a fifteen-page Opinion, including a quotation from an Opinion by Justice Traynor, concerning res judicata (p. 14 of Opinion, found in Appendix to Petition for Cert).[2] The Court of Appeal summarized Petitioner's "fraud" action: "It is clear the complaint sought vindication of the same primary right involved in the first action" (Opinion, p. 14). The Court of Appeal also noted that the matters of which Petitioner complained occurred long before the trial of the first action; that the alleged lies would be readily contradicted at trial; and that there was no concealment involved in these matters (Opinion, p. 13).

Petitioner relies heavily on Staub v. City of Baxley, 355 U.S. 313 (1958), as authority for her position that the state court decision rests upon grounds of decision of state law that were without any fair or substantial support. However, Staub, supra, is not in point.

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2. An Opinion of the pre-eminent California Supreme Court Justice, Roger F. Traynor, concerning a question of California law, is afforded great respect.

Staub, supra, involved a mid-fifties ordinance of a Southern City, in Georgia. The ordinance prohibited a "solicitation" of City citizens, without first obtaining a permit from the City to do so. Rose Staub was convicted for soliciting labor union membership without obtaining a permit, notwithstanding her federal rights violation claim.

The Georgia Court of Appeals affirmed the conviction. It declined to rule on Staub's claim of federal rights violation, on two grounds: 1) she lacked standing to attack the constitutionality of the ordinance, because she had made no attempt to obtain a permit, and 2) under state procedure, her attack should have been made against specific sections of the ordinance, and not against the ordinance as a whole.

The U.S. Supreme Court granted Certiorari, holding 1) that the state court decision did not rest on an adequate non-federal ground, and 2) the ordinance was invalid on its face, abridging freedom of speech.

Staub, supra, is completely distinguishable from the facts at bench. No free speech issues are present herein. The California state court opinion was decided upon a well-settled principle of substantive state law, res judicata. No federal issue is present in the facts at bench. In contrast, in Staub, supra, the judgment of conviction

was founded upon an ordinance which, on its face, imposed an unconstitutional prior restraint upon the enjoyment of First Amendment freedoms. Staub, at 325.

Staub, supra, is a First Amendment "right to free speech" case; the instant case is entirely different, a state law "res judicata" case.

> "The doctrine of res judicata gives conclusive effect to a former judgment in subsequent litigation involving the same controversy. It seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration. It is well-established by common law and civil jurisdictions, and is frequently declared by statute...." ---7 Witkin, California Procedure (3d ed.), "Judgments", Section 190, at p. 621.

3. THERE IS NO "EQUAL PROTECTION" ISSUE.

It appears Petitioner seeks to raise a new issue, an "equal protection" federal issue, in her "Question Presented, No. 2". This alleged question was not raised previously; the Court will not hear this now, for the first time. Marks v. New Jersey, 398 U.S. 71 (1970); Tacon v. Arizona, 410 U.S. 351 (1973); Webb v. Webb, supra, 451 U.S. 493, 501 (1981); Bankers Life & Cas. Co. v. Crenshaw, 486 U.S. 71, 77 (1988).

4. THERE IS NO "BIAS" ISSUE.

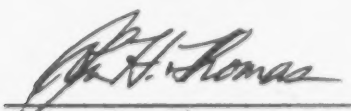
As to Petitioner's "Question Presented, No. 3" (inferred Court bias), Petitioner wrote the Court of Appeal, while her appeal was pending, to alert it that she knew that Respondent had been the Chief Research Attorney there (in 1966). That may well explain the fifteen-page Opinion from a Court that cherishes brevity in its Opinions. The Opinion went to extra lengths to discuss all of Petitioner's contentions thoroughly.

Other than to state the "Question Presented" (Petition, p. i), Petitioner makes no other mention of any issue of "bias" on the part of the Court of Appeal. There is no "bias" issue.

CONCLUSION

For the above reasons, and because the case does not involve an important issue worthy of the Court's attention, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,



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APPENDIX

San Diego County Superior Court Judgment (first action between the parties).

Pages from Petitioner's First Amended Complaint (second action between the parties).

SUPERIOR COURT OF STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JOHN H. THOMAS,	)	Case No. 595034
	)	
Plaintiff,	)	JUDGMENT
v.	)	
	)	
BILLIE LITZ WUCHER, etc.,	)	
	)	
	)	
Defendants.	)	ENTERED
	)	Nov. 7, 1990
AND RELATED CROSS-ACTIONS	)	Judgment Book 2037/Page 052
	)	

This cause came on regularly for trial on the 31st day of July, 1990, in Department 8-H of the above-entitled court, the Honorable Ronald L. Johnson, judge, presiding. Plaintiff and Cross-Defendant, John H. Thomas, appeared in person and through his attorney, James J. Biggins, Jr., and the Defendant and Cross-Complainant, Billie Litz, formerly Wucher, appeared by and through her attorneys, Lande and Rolston, by Steven A. Lande.

A jury of twelve persons was regularly impaneled and sworn to try the action. Witnesses on the part of both parties were sworn and examined. After hearing the evidence, the arguments of

counsel, the court's finding as a matter of law that Cross-Defendant Thomas converted approximately $44,000.00 of funds held by him for Cross-Complainant by removing said sum from his client's trust account for approximately one month and that the damages therefore were in the sum of $359.00, and the jury having heard the instructions of the court, it retired to consider their verdict, subsequently returned to court, and duly rendered their verdict in writing in words and figures as follows:

We, the jury in the above-entitled case, find for the Plaintiff on the complaint and award $60,678.75.

On the Cross-Complaint, we the jury in the above-entitled case, find the following special verdicts on the questions submitted to us:

Question No. 1: Was the cross-defendant negligent?

Answer: No

Question No. 8: Did the cross-defendant John H. Thomas unlawfully convert monies that were the property of cross-complainant Billit Litz?

Answer: No

Question No. 12: Did the cross-defendant John H. Thomas breach his fiduciary duty to the cross-complainant Billie Litz?

Answer: No

Dated: Aug. 10, 1990 Marjorie Benson,
Foreman

WHEREFORE, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged and decreed that Plaintiff John H. Thomas have and recover from Defendant Billie Litz, formerly Wucher, the sum of $60,678.75, with interest thereon at the rate of 7% per annum from the 22nd day of March, 1988, together with costs and disbursements amounting to the sum of $6,065.50.

IT FURTHER ORDERED, adjudged and decreed that Cross-Complainant Billie Litz, formerly Wucher, have and recover from Cross-Defendant John H. Thomas the sum of $359.00 and that except as thus ordered, adjudged and decreed that she take nothing by her cross-complaint.

Dated: Nov. 5, 1990

/s/ Ronald L. Johnson
Honorable RONALD L. JOHNSON
JUDGE OF THE SUPERIOR COURT

Approved as to form:
Lande and Rolston
By Steven A. Lande

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FILE STAMPED NOVEMBER 12, 1993

SUPERIOR COURT OF STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

BILLIE J. LITZ, Plaintiff, v. JOHN HARDY THOMAS, attorney, and DOES 1-10, Defendants.	Case No. 667516 Department 24 FIRST AMENDED COMPLAINT - FRAUD CAUSING MONEY DAMAGES TO LITZ in the amount of $109,000+ in Attorney Fees and Court Costs, and Thousands of Dollars in Extra Mortgage Interest

Pursuant to LEAVE OF COURT, following an ORDER SUSTAINING A DEMURRER to her original COMPLAINT filed August 9, 1993, Plaintiff LITZ files this FIRST AMENDED COMPLAINT, and alleges:

1. Plaintiff, BILLIE J. LITZ, also known as BILLIE LITZ WUCHER, is a resident of the San Diego County, California Judicial District, residing in University City, Zip Code 92122.

2. Defendant, JOHN HARDY THOMAS, is, and at all times herein mentioned was, an attorney at law duly admitted and practicing law in the State of California, with office address: Suite 2212, 8950 Villa La Jolla Drive, La Jolla, California 92037-1745; which office is in the San Diego County, California Judicial District.

3. Plaintiff, BILLIE J. LITZ, is a citizen of the United States, born in Tennessee, and has been a resident and

herein for FRAUD against THOMAS will be accepted by the Court, and that THOMAS will not be allowed to DEMUR for res judicata and collateral estoppel in this case. THOMAS has "unclean hands" because he could have prevented the problem if only he had told JUDGE JOHNSON about the DECISION incorporated into the JUDGMENT JUDGE MAY had filed in the previous trial, BLOOM, et al, which had many of the same issues as the fees/malpractice/conversion case, as regards the TRO.

LITZ apologizes to the COURT for having from time to time typed between the lines, and for not retyping this entire FIRST AMENDED COMPLAINT so that some of the redundancy resulting from the fact that LITZ did not know until she had typed nearly all the pages herein that she had a JUDGMENT in the BLOOM case which said that the STATEMENT OF DECISION of JUDGE MAY was to be "incorporated by reference" into the JUDGMENT. This caused LITZ to have to start at about page 6 and incorporate that fact into what she had already written, and she retyped many pages, yet still was unable to do it right. (LITZ does not own nor have access to a word processor with screen and printer which is a "must" if one is not to slave over the typing when there are this many pages, and she has done the best she could with what she has. LITZ also does not know how to operate the word processor). LITZ believes that the JUDGMENT strengthens her case when she states that (according to logic, if THOMAS can plead res judicata and collateral estoppel to her COMPLAINT) THOMAS had a duty to inform JUDGE JOHNSON before the fees/malpractice/conversion trial of the facts in regard to the JUDGMENT in the prior BLOOM trial, as did the other attorneys, BIGGINS and LANDE, who all knew of the fact.

E. If LANDE had wanted to be helpful to LITZ, he would have made a statement such as this to the JUDGE and JURY: "My client, Mrs. LITZ, believes in the fairness of the justice system so very much that she was willing to borrow $40,000 against the equity in her house in order to be able to bring this case to trial." LANDE was paid by LITZ more than $35,000, and probably closer to $36,000 for his attorney bill. In addition to the $25,000 retainer, LITZ gave him a check for $7,500 as well as other smaller checks, and then signed a lien on the money THOMAS was holding, against LITZ' will, in his client's trust account, money which belonged to LITZ...the $61,241.93.

F. It has been suggested by many San Diego attorneys with whom LITZ has spoken in the past year, that she should have sued LANDE for malpractice. LITZ feels this way: If a woman has to sue one attorney for malpractice and converson--THOMAS--and she hires an attorney for this purpose, she should not have to go to the expense and emotional strain to sue the attorney she hired to prosecute THOMAS, also. THAT IS A RIDICULOUS SOLUTION! Surely, there must be some better way to get JUSTICE in the COURTS, than that.

G. Whatever the problem actually is, LITZ knows that LITZ was not the

problem in that dissolution/promissory notes matter that she hired THOMAS to take care of for her. Maybe LANDE was mentally incapacitated and maybe not---time will tell--if not, he is responsible, too.

H. LANDE, at the fees/malpractice/conversion trial lit into a tirade about the subject of sexual preference, when it was really only an aside that was brought up, and not a matter worth talking about at the trial. He was irrational in his behavior. That is one more reason LITZ believes that he was not the LANDE she hired in the fall of 1988, at the time of the trial in July/August, 1990.

I. After the trial ended August 10, 1990, LITZ was in a state of depression that is hard to imagine. She had all the evidence to make sure that she won the case--yet she lost. All she had left was the little equity in her house, and she had debts to pay and among them was the bill of STEVEN A. LANDE. At the end, he billed an additional $92,500, approximately. LITZ was forced into bankruptcy--CHAPTER SEVEN--a disgrace to her family, and to this day, LITZ is still suffering the results of having to do that. There is absolutely no way she could have ever paid off what she owed; and her credit rating which had always been excellent, or otherwise

she would never have been able to make loans on the equity of her house, was "shot."

27. LITZ prays that the court will take into consideration the ramifications this fraud has caused her to suffer, when it makes its decision as to what can be done about this lawsuit. LITZ graduated high school in 1951. She was idealistic then--and to this day, it is hard to give that up, despite the fact that she has had to endure the utmost hardship since July 25, 1984.

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FIRST CAUSE OF ACTION-FRAUD ON COURT
LITZ DENIED DUE PROCESS OF LAW
IN FAIR TRIAL
JURY AWARDED THOMAS $60,678.75
w/interest and $6,065.50 COSTS

29. THOMAS knowingly, and wilfully, and to gain the money he had kept from LITZ in the client's trust fund since September, 1987, (with the exception of the time he used it for his own purposes when he wrote checks to himself, despite the fact that LITZ had written THOMAS on September 29, 1987, and disputed his right to more than $6,500.60 which she offered to pay him under certain

conditions), LIED UNDER OATH at the fees/malpractice/conversion trial on August 9, 1990. The lie was in regard to the most relevant material fact in the whole trial--a temporary restraining order ("TRO") which was used to restrain the sale of the WUCHER house temporarily in 1984, from approximately September 14, 1984 through September 25, 1984, according to the true facts in this case. The amount THOMAS had kept (presumably in an interest-bearing account) was $60,241.93, the attorney bill balance which THOMAS claimed LITZ owed him as of December 9, 1987. The amount he won in judgment because the jury in the fees/malpractice/conversion trial awarded THOMAS his fees bill as of January 21, 1988, was $60,678.75 and $6,065.50 costs. LITZ won judgment for the nominal amount of $359, interest for approximately one month on $44,000 because, as a matter of law, conversion occurred--and this was won in a directed verdit of Honorable JUDGE RONALD L. JOHNSON who presided at the fees/malpractice/conversion trial.

30. THOMAS knowingly and wilfully kept mum about his knowledge of the fact that a DECISION had been made by Honorable JUDGE ROBERT E. MAY, in the BLOOM et al v. WUCHER trial which DECISION was filed October 4, 1989, approximately 10 months before the fees/

earned on the $60,241.93 would have been sufficient to pay all the judgment THOMAS was awarded. LITZ believes that THOMAS has been paid in full, and will stand corrected if it is discovered not to be true. This is the best information she has at present. LITZ accuses THOMAS of having wilfully, and knowingly, taken the money he was awarded in judgment in the trial, despite the fact that he gained it by lying on the witness stand about the TRO and not disclosing to JUDGE JOHNSON the true facts of the TRO as stated in JUDGE MAY's DECISION in BLOOM, filed approximately 10 months before the fees/malpractice/conversion trial.

SECOND CAUSE OF ACTION-FRAUD: LARCENY BY TRICK

54. Plaintiff, LITZ, refers to and incorporates by reference each and every allegation contained in every paragraph above and below of this FIRST AMENDED COMPLAINT, including the FIRST CAUSE of ACTION, herein.

LARCENY BY TRICK: Penal code Sec. 310:

DEFINITION: The appropriation of property, the possession of which was fraudulently acquired.

Theft by trick is established when the victim gives up possession of the property for a special purpose.

55. LITZ and THOMAS signed a letter dated July 10, 1987, which, together, gave MARA ESCROW instructions of what to pay and when to pay (and the interest, too) the judgments WUCHER owed LITZ which he had arranged to pay through the escrow company after having borrowed on his house to have the money to pay. LITZ expected THOMAS' and LITZ' names would be on the MARA ESCROW check when it was paid--they both were judgment creditors of WUCHER;

not have to do anything. After all, she is an old woman. MEANTIME, THOMAS continues to practice law in La Jolla, and LITZ has been in litigation since January 21, 1988, when THOMAS first filed suit against her for his fees; and the court has done nothing, the State Bar has done nothing, and the Supreme Court apparently plans to do nothing. It is now November, 1993. There has been more than nine years since LITZ went to THOMAS to hire him for a simple agreed-upon divorce; the marriage to WUCHER only lasted less than three years. LITZ prays that the SUPERIOR COURT OF SAN DIEGO will allow her to keep this lawsuit for fraud against THOMAS in the Court for this COURT to decide the issues LITZ is raising in this FIRST AMENDED COMPLAINT.

THIRD CAUSE OF ACTION-FRAUD-THOMAS' DECEPTION/MISREPRESENTATION MADE WITH INTENT TO INTERFERE WITH LITZ-WUCHER AGREEMENT MADE BEFORE LITZ HIRED THOMAS, CAUSING LITZ THEN TO LOOS HER PROSPECTIVE ECONOMIC ADVANTAGE

64. Plaintiff, LITZ, refers to and incorporates by reference each and every allegation contained in the above paragraphs, and the ones below, as though fully set forth at length herein.

65. LITZ went to THOMAS' office, July 25, 1984, hired him for a $750 flat fees, gave him a $200 retainer, and signed papers for him to file for her dissolution. LITZ told THOMAS that she and husband, JAMES P. WUCHER, had an agreement regarding several things, namely:

1. They both wanted a divorce.

2. Wucher's house had been sold and escrow opened approximately 2-3 days before July 25, 1984, through SECURITY FIRST ESCROW COMPANY; the house having been sold to FREDERICK PALUMBO, an attorney who was planning to use the house for his

WHEREFORE, Plaintiff LITZ prays for judgment against JOHN HARDY THOMAS, and each of the DOES 1-10, as follows:

1. On Plaintiff's FIRST CAUSE OF ACTION-FRAUD ON COURT-LITZ DENIED DUE PROCESS OF LAW IN FAIR TRIAL - JURY AWARDED THOMAS $60,678.75 w/interest @ 7% and $6,065.50 in COSTS: LITZ prays for full restitution, including punitive damages for THOMAS' defrauding her as an officer of the COURT, and for LITZ' trauma and continued inconvenience and disgrace of having to file bankruptcy right after the trial ended in CASE NO. 595034 in SUPERIOR COURT OF SAN DIEGO, July-August, 1990:

A. $109,000+ (according to proof) in attorneys bills paid and costs; THOMAS' $60,678.75 is included in this sum, however, any interest he earned while he kept $60,241.93 since September 5, 1987, is not included in this sum;

B. For other damages to be established at the time of trial according to proof.

C. For punitive damages, as the COURT deems fair.

2. On Plaintiff's SECOND CAUSE OF ACTION - FRAUD: LARCENBY BY TRICK.:

A. $60,241.93 of LITZ' money was taken by THOMAS on September 5, 1987, when THOMAS should have paid LITZ (with the exception of the JUDGMENT money which belonged to THOMAS in the MARA

ESCROW check made to THOMAS and TEAFF on September 3, 1987), and Plaintiff LITZ prays for restitution with interest at the legal rate.

B. $109,000+ (according to proof) in attorneys bills paid and costs by LITZ to continue to be represented in the litigation she was forced to endure; otherwise let others, including DEFENDANT, THOMAS, win by default on the lawsuits she had and has had.

C. For other damages to be established at the time of trial according to proof.

D. For punitive damages, as the COURT deems fair.

3. On Plaintiff's THIRD CAUSE OF ACTION-FRAUD-THOMAS' DECEPTION/MISREPRESENTATION MADE WITH INTENT TO INTERFERE WITH LITZ-WUCHER AGREEMENT MADE BEFORE LITZ HIRED THOMAS, CAUSING LITZ THEN TO LOSE HER PROSPECTIVE ECONOMIC ADVANTAGE.

A. $61,959.87 was owed LITZ by WUCHER on November 12, 1984, when the house could have been sold to PALUMBO, and interest from that time which was stated in the DISSOLUTION PROMISSORY NOTES JUDGMENT paid in the MARA ESCROW CHECK, (according to proof) and LITZ lost (was penalized) $6,554. because of THOMAS' action/inaction regarding the TRO on the WUCHER house sale and because of THOMAS' not accepting the signed by SCHAEFER, ESCROW INSTRUCTIONS OF VENDORS

form so that the sale could go through escrow by November 12, 1984, and interest thereon since November 12, 1984.

B. $109,000+ paid in attorney bills and costs (according to proof) because of the house sale not being consummated through escrow closing and LITZ being paid her check above, which LITZ would not have had in expenses otherwise.

C. For other damages to be established at the time of trial according to proof.

D. For punitive damages, as the COURT deems fair.

4. On Plaintiffs FIRST, SECOND AND THIRD CAUSES OF ACTION above, in addition to that already asked for in points 1, 2 and 3:

A. FOR attorneys fees and costs for bringing this lawsuit for fraud through to its completion.

B. FOR mortgage interest LITZ has paid over and above what she would have paid if her mortgage payment had remained $442.75, as it was in July, 1984, when THOMAS first was hired by LITZ to represent her in her dissolution from WUCHER, according to proof, amounting to approximately $80,000 by rough calculation today.

C. FOR all expenses, according to proof, of copying, etc. because of this

lawsuit being in COURT.

D. FOR all such other and further relief as the COURT deems just and proper.

Dated: November 12, 1993

/s/ Billie J. Litz
BILLIE J. LITZ, PLAINTIFF
In Propria Persona

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